IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.2719 of 1989

Sudhakar Mahadeo Gaikwad — Petitioner
Vs.
Dr.Ambedkar Sahakari Grih
Nirman Sanstha Ltd. & ors. — Respondents

Mr.K.S.Patil h/f. Mr.P.N.Joshi for petitioner.
Resp.No.1 served.
Mr.M.R.Deshpande with Mr.S.B.Kumbhar for Resp.No.2.
Mr.D.B.Ladge for Resp.No.3-absent.

CORAM: B.H.MARLAPALLE,J.

June 12, 2006.

ORAL JUDGMENT:

1. This petition deals with the inter se dispute between three real brothers and at the instance of the petitioner in Dispute No.424 of 1983 wherein other two brothers viz. respondent nos.2 and 3 were impleaded as opponent nos.2 and 3 respectively. It was the case of the petitioner and which has not been disputed that Flat No.14-B located in Dr.Ambedkar Sahakari Grih Nirman Sanstha, Deolali Camp at Deolali, Dist.Nashik was the property of Shri Mahadeo son of Dashrath Gaikwad, the father of the petitioner and the respondent nos.2 and 3. On his demise the opponent no.1 - Society transferred the flat in the name of the original opponent no.2 and as per the petitioner the said opponent no.2 let out the flat

and started earning rental compensation without sharing with the other two brothers. The petitioner was at the relevant time working as the Police Constable and staying in the police quarters in Deolali camp whereas respondent No.3 - Murlidhar was residing at Mumbai and he continues to do so even as at present. As per the opponent no.2, the petitioner and the opponent no.3 had given consent in writing for the flat to be transferred in the name of opponent no.2 and the opponent no.1-Scoiety acted upon the application submitted by opponent no.2 on the basis of the said consent. The dispute filed by the petitioner was mainly for the reliefs: (a) for a declaration that the suit flat was the property of the three brothers with 1/3rd share each, (b) the opponent no.1 - Society was required to enter the names of all the three brothers as the joint property holders in its register and issue the share certificate accordingly and (c) the income arising from the said flat by way of rental compensation was required to be shared by all the three brothers in equal proportion of 1/3rd each.

2. The learned Judge of the Co-operative Court at Nashik allowed the dispute and passed his award on

14/3/1986. The operative part of the said award reads as under:

> " It is declared that the disputant and opponent No.2 and 3 are entitled to occupy and enjoy block No.14-B in the opponent No.1 society. The opponent No.1 Society is directed that the name of the disputant and Opponent NO.3 be recorded along with Opponent No.2 as legal heir of deceased Shri M.D. Gaikwad.
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> It is further ordered that the Opponent No.2 should allow the disputant and opponent No.3 to enjoy and occupy block No.14-B jointly."

3. Opponent Nos.1 and 2 filed Appeal No.225 of 1986 before the Maharashtra State Co-operative Appellate Court at Mumbai and the said appeal was partly allowed vide judgment and order dated 25/2/1988. The award passed by the Co-operative Court and which was under challenge in the appeal came to be modified by deleting the second part of

the directions so as to allow the petitioner and respondent no.3 to enjoy and occupy the suit block along with respondent no.2. The petitioner is aggrieved by the said modification and hence this petition.

4. It was never the case of the petitioner that the opponent no.2 was occupying the flat for the use of his family and on the other hand it was specifically contended that the flat was rented out and, therefore, all the three brothers were entitled to share the compensation with 1/3rd share each. At the relevant time neither the petitioner nor the respondent no.3 had the desire to come and occupy the suit flat along with the opponent no.2. There was no averment that opponent no.2 was occupying the flat for himself or his family members. It was, therefore, unnecessary for the Co-operative Court to give such directions against the opponent no.2 so as to allow the petitioner and opponent no.3 to enjoy and occupy the suit block jointly. As at present the petitioner has retired from the police force and it is not the case of any of the parties that the suit flat is so big that it can occupy all the three families. Therefore, there was no reason for the

Co-operative Court to issue such a direction against the opponent no.2 so as to allow the petitioner and opponent no.3 to enjoy and occupy the said flat. This order can be interpreted to mean that the flat should be vacated and the opponent no.2 must allow the petitioner and opponent no.3 to enjoy and occupy the block. The lower Appellate Court rightly intervened and set aside the direction and, therefore, no interference is called for in the impugned order of the lower Appellate Court. At the same time both the Courts below have unanimously declared that the suit flat is the common property of all the three brothers and the society has been directed to correct its record. Accordingly any rental compensation arising from the said flat will have to be shared by all the three brothers with 1/3rd share each and, therefore, the petitioner and respondent no.3 shall be entitled to recover 2/3rd share together from the respondent no.2 from the time the suit flat was given on rent and the same formula would apply if the suit property is given on rental basis or on lease as at present. However, if the suit flat is being occupied by opponent no.2 or any of his family members exclusively and the petitioner and respondent no.3 or any of their members are not

staying in the said flat, both these brothers i.e. the petitioner and the respondent no.3 are entitled to claim 2/3rd of the market rental amount from the opponent no.2 by way of their share in the suit house. To avoid any continuing disputes in future all the three brothers are also at liberty to dispose off the suit flat and share the proceeds in the same proportion i.e. 1/3rd each.

5. Save and except the above directions for sharing the rental compensation or the sale proceeds, the petition stands dismissed. Rule discharged. No costs.

(B.H.MARLAPALLE,J.)